IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

FAMILY COURT APPEAL NO. 71 OF 2004

Prabhakar Bhagoji Khedekar ... Appellant

Vs.

Madhuri Prabhakar Khedekar ... Respondent

Mr. M.A. Patil for Appellant.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : AUGUST 25, 2004

P.C. :

1. By the present appeal, the appellant challenges the order dated 4.12.2003 whereby the appellants petition for divorce has been rejected. It is the contention on behalf of the appellant that the learned Family Court did not consider the evidence in proper perspective and in these circumstances findings are liable to be reversed.

2. While admitting the first appeal what the court must consider is whether the view taken by the Family Court was a view impossible of being taken considering the evidence on record. The appellant examined himself. In the evidence it has come that they were married on 25.4.1999. A child was born

on 28.4.2000. The appellant in the seventh month of pregnancy went to her maternal house and thereafter did not come back to her matrimonial home. It is therefore, the conduct between 25.4.1999 and September/October, 1999 that has to be considered to find out whether the appellant has been able to make out case of mental cruelty. The evidence on behalf of the appellant is that the respondent spoke in insulting language and did not behave properly. She asked him to drink and leave his the job. It is further case that because of this behaviour and the mental harassment, he fell sick and was treated by the Medical Officer. When he was hospitalised, respondent did not care to visit him. It is further case that when he was admitted to the Naval Hospital and that respondent visited to the hospital that gave him mental tension. Respondent had also lodged complaint with police and therefore prayed for divorce. In the cross examination, he has admitted that she was working when they got married. Suggestion that the respondent did not ask him to leave job and stay at home has been denied. He denied that the respondent was giving salary to him. He denied that money earned by the respondent was spent on household expenses. He denied that after the birth

of the child, respondent came to matrimonial home and he refused to accept her. He stated that for the purpose of marriage he had taken a loan of Rs.20,000/-. The only other witness examined was the sister Vandana Sadashiv. It is deposed that the respondent did not contribute anything from her salary and therefore, there were quarrels between the appellant and respondent. She has further stated that after delivery, respondent has not returned back. She has further stated that they did not go to call the respondent neither did the family members of the respondent contact them to take back the respondent. This is the evidence which has come on record in support of the allegations by the appellant of mental cruelty.

3. On the other hand, respondent examined herself. She has deposed that she was beaten by the brother of the appellant and as such she had to lodge a complaint. She has then deposed to the various steps taken including by police officials to ask the appellant to take back the respondent. She has further deposed that she gave salary to the appellant's sister and similarly appellant also used to give his salary to his sister. She has deposed that at the time of marriage, she was

drawing salary of Rs.4,000/- per month. In support of her case she has examined Sarojini Shivram, who is husband of her younger sister.

4. On analyzing the evidence, the learned trial court framed issue No. 1 as to whether the appellant proves that respondent had treated him with cruelty and after considering the evidence and considering various judgements including e judgements of the Apex Court, the learned trial court came to the conclusion that no case of cruelty had been made out. Further held that there was no specific case or instance of cruelty pleaded by the appellant nor was any evidence produced in corroboration of his pleas.

5. Considering the test which the First Appellate Court has to apply, we do not find that the learned Family Court has taken a view which could not have been taken based on the evidence on record. Nothing has also been pointed out that the Family Court has failed to take into consideration the evidence which was led.

. We have ourselves examined the oral evidence which forms part of the paper book and we are of

the opinion that the appellant failed to make out case of mental cruelty. In the light of that there is no merit in the matter. Appeal accordingly dismissed.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)